IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 543 OF 1999

Shri Abdul Khalia Abdul Razak Shaikh. .. Appellant

Versus

Shri Sambhu Gupta .. Respondent

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Mr. S.P. Srivastava for the appellant.

Mr. D.R. Shah for respondent.

CORAM : D.G. KARNIK, J

DATED : 17th November 2006

P.C.:

1. Heard learned Counsel for the parties. This appeal is directed against the order dated 10th February 1999 passed by the learned Judge of the City Civil Court, Mumbai in Motion No.2226 of 1997 taken out by the appellant-plaintiff.

2. The suit relates to the shop premises bearing shop no.58, Targalli No.1, admeasuring about 9’ X 28’feet described in the plaint. Appellant filed a suit bearing Civil Suit No.858 of 1997 against the respondent for an injunction restraining them from disturbing his possession of the suit premises. In the suit the appellant claimed that he had purchased the suit premises under an agreement dated 6/2/1993 from the previous owner Mr. Rahamatullah and was in possession of the same. He was carrying on business therein after obtaining the necessary licence from the Bombay Municipal Corporation and was also residing in a part of the suit premises. He alleged that on 30th December 1996, the respondents threatened to dis-possess him and therefore, the suit was filed by him on 6th February 1997. The plaint was amended subsequently in which it was stated that the suit was fixed on the board of the Court on 18th February 1997 under a false complaint filed at the instance and instigation of the respondents was arrested and taking advantage of the fact that the appellant was in custody, the respondents dispossess him and took forcible possession of the suit premises. By the amendment, the appellant claimed a relief of mandatory injunction for restoration of possession. He then took out the motion

for restoration of the status-quo ante pending the hearing and decision of the suit. By the order dated 10th February 1999, the City Civil Court, Mumbai dismissed the motion. That order is impugned in this appeal.

3. At the stage of admission of this appeal, on 22nd July 1999, this Court prima-facie came to the conclusion that the appellant was dispossessed of the suit premisses during the pendency of the suit. This Court took into consideration that appellant had obtained licence of the Shops and Establishments Act and was also possessing the ration card showing that the suit premises as his residence. However, instead of ordering restoration of the possession immediately in favour of the appellant, this Court appointed the Court Receiver as the receiver of the premises with a direction to the court receiver that the appellant be put in possession of the suit premises as an agent of the receiver. The said order was challenged by the respondent by filing Special Leave Petition No.1269 of 1999 before the Hon’ble Supreme Court. By an order dated 22nd November 1999, the Special Leave Petition filed by the respondent was dismissed and the order of appointment of the Court Receiver with a direction to put appellant is in possession of the suit

premises as an agent of the court receiver was confirmed. Accordingly, the court receiver has put the appellant in possession of the suit premises on 4th December 1999.

4. The appellant had produced before the trial Court an agreement of purchase dated 6th February 1993 under which he came in possession with the suit property. He had also produced on record shop licence issued by the Municipal Corporation, Mumbai which prima facie shows that the appellant was carrying on business in the suit premises. While carrying on the business, the appellant was simultaneously residing in part of the suit premises and the rationing card also showed that the suit premises as the residential address of the appellant. Prima facie therefore, the appellant has proved that he was in possession of the suit premises on the date of the suit. The appellant had also produced before the trial Court copies of the F.I.R. in persuance of which he was arrested In the circumstances, prima facie I am of the view that the appellant had proved that he was dis-possessed during the pendency of the suit while he was in police custody. Of course, certain documents were produced by the respondents to show their possession like the agreement of purchase with one Mr. Pednekar from which they claim to have purchased the shop. However,

the title of Pednekar was not proved. In the circumstances, at this stage,it would be appropriate to continue the order of the appointment of the receiver instead of recording any definite findings about the possession. This is especially so because the suit is pending in trial Court. The receiver has been appointed 7 years ago and the order of the appointment of the receiver has been confirmed by the Hon’ble Supreme Court. It would be appropriate to continue the status quo which is in existence far nearly for 7 years.

5. In the circumstances, appeal is partly allowed. The order passed by the trial Court is set aside. The appointment of the Court Receiver as the receiver of the suit premises made by this Court by interim order dated 22nd July 1999 is hereby confirmed as the final order. Similarly, the interim direction to the Court Receiver to appoint the appellant as an agent of the court receiver is also confirmed.

6. Considering the fact that the suit is filed by the appellant is more than 7 years old, the trial court shall dispose of the suit as expeditiously as possible.

(D.G. KARNIK, J)